

**\*E-FILED 10-31-2011\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

AURORA LOAN SERVICES LLC,

No. C11-05240 HRL

Plaintiff,

**ORDER THAT CASE BE REASSIGNED  
TO A DISTRICT JUDGE**

v.

**REPORT AND RECOMMENDATION**

HECTOR A. PERLERA; LAURA  
GUTIERREZ, and DOES 1-5,

Defendants.

Pro se defendants Hector Perlera and Laura Gutierrez removed this unlawful detainer action from San Benito County Superior Court. For the reasons stated below, the undersigned recommends that this action be summarily remanded to state court.

Plaintiff Aurora Loan Services LLC (“Aurora”) filed this unlawful detainer action in May 2011 San Benito County Superior Court. According to the complaint, plaintiff acquired the subject property through a foreclosure trustee’s sale in March 2011. (Complaint, ¶¶ 4-5). The complaint further alleges that on March 16, 2011, plaintiff served defendants with a notice to vacate, but defendants refused to deliver possession of the property. (*Id.* ¶¶ 6-8).

Removal to federal court is proper where the federal court would have original subject matter jurisdiction over the complaint. 28 U.S.C. § 1441. If, after a court’s prompt review of a notice of removal “it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court *shall* make an order for summary remand.” 28

1 U.S.C. § 1446(c)(4) (emphasis added). These removal statutes are strictly construed against  
2 removal and place the burden on the defendant to demonstrate that removal was proper.  
3 Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus v.  
4 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).

5 Federal courts have original jurisdiction over civil actions “arising under the  
6 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A claim “arises under”  
7 federal law if, based on the “well-pleaded complaint rule,” the plaintiff alleges a federal claim  
8 for relief. Vaden v. Discovery Bank, 129 S. Ct. 1262, 1272 (2009). Defenses and  
9 counterclaims asserting a federal question do not satisfy this requirement. Id.

10 Defendants contend that removal is proper because the “complaint presents federal  
11 questions.” (Notice of Removal at 2). The record indicates that plaintiff’s complaint states only  
12 a claim for unlawful detainer. It does not allege any federal claims whatsoever. (Notice of  
13 Removal Ex. A). Defendants argue that Aurora’s unlawful detainer complaint violates federal  
14 law. (Notice of Removal, ¶¶ 8-10). Here, they point out that they filed a demurrer, claiming  
15 that plaintiff failed to give them proper notice. Additionally, in their Notice of Removal,  
16 defendant assert that plaintiff “failed to comply with The Protecting Tenants at Foreclosure Act  
17 [12 U.S.C. § 5220].” (Notice of Removal at 2). However, defendants’ allegations in their  
18 removal notice or in a response to plaintiff’s complaint cannot provide this court with federal  
19 question jurisdiction. Accordingly, defendants have failed to show that removal is proper on  
20 account of any federal substantive law.

21 Nor does this court have diversity jurisdiction over the matter. Defendants do not  
22 establish diversity of citizenship in their removal notice, and a review of the complaint shows  
23 that it specifies that the amount of claimed damages does not exceed \$10,000.00. (Complaint at  
24 1). In any event, as California defendants, defendants do not have the right to remove this  
25 action to federal court under diversity jurisdiction. 28 U.S.C. § 1441(b) (stating that an action is  
26 removable for diversity “only if none of the parties in interest properly joined and served as  
27 defendants is a citizen of the State in which such action is brought”).  
28

1 Because the parties have yet to consent to the undersigned's jurisdiction, this court  
2 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned  
3 further RECOMMENDS that the newly assigned judge summarily remand the case to San  
4 Benito County Superior Court. Pursuant to Federal Rule of Civil Procedure 72(b), any party  
5 may serve and file objections to this Report and Recommendation within fourteen days after  
6 being served.

7 SO ORDERED.

8 Dated: October 31, 2011

  
9 HOWARD R. LLOYD  
10 UNITED STATES MAGISTRATE JUDGE

1 5:11-cv-05240-HRL Notice has been electronically mailed to:

2 Eric Gene Fernandez eric.fernandez@tflglaw.com, donna.hoagland@tflglaw.com,  
3 laurie.howell@tflglaw.com, noah.bean@tflglaw.com, sean.bedrosian@tflglaw.com

4 Sean Bedrosian sean.bedrosian@tflglaw.com

5 5:11-cv-05240-HRL Notice sent by U.S. Mail to:

6 Hector A. Perlera  
7 501 Talbot Drive  
8 Hollister, CA 95023

9 Laura Gutierrez  
10 501 Talbot Drive  
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